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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,777	06/26/2000	Thomas P. Stewart	01978.0229	3462

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EXAMINER

TRIEU, THERESA

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 05/29/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/603,777

Applicant(s)

STEWART ET AL.

Examiner

Theresa Trieu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims and they do not include the following reference sign(s) mentioned in the description. Therefore, the "blanket, blanket having a channels, mattress, mattress pad", recited in claims 22-29, 41-50, 70, 77-81, 82-86, and 88, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "46" has been used to designate both display/input unit (see page 6, line 12) and hot reservoir (see page 7, line 7). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Since allowable subject matter has been indicated, applicant is encouraged to submit formal drawings in response to this Office Action. The early submission of formal drawings will permit the Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process.

*Specification*

4. The disclosure is objected to because of the following informalities:

- On page 1, line 23, "hypothermia or hypothermia" should be changed to --  
hypothermia or hyperthermia --.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 74-76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 74-76, the limitation "temperature below the mammal's normal temperature, the mammal's normal temperature, and a temperature above the mammal's normal temperature" is not clear because of what temperature that applicants want to mention.

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***Claims Objections***

6. Claims 22-29, 41-50, 70, 77-81, 82-86, and 88 are objected as a result of the claimed "blanket, or mattress, or mattress pad." The claimed blanket, mattress, or mattress pad should be given reference numeral in the specification and drawings. Otherwise, the language not depicted with reference numerals in the specification and drawings should be removed from the claims.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

***Claims 1-3, 10-12, 20-29, 30-32, 40-56, 63-66, 69, 70, 73-76, 77-88 are rejected under 35 U.S.C. 102(a) as being anticipated by Kushnir (Publication Number WO 99/44552).***

Re claims 1, 10, 30, 54 and 64, as shown in Figures 5-7, Kushnir discloses a device for delivering a desired medium at certain temperature ranges for temperature management of a mammal, comprising:

an inlet source (244) receives the desired medium and directs the desired medium (106, 107) to a temperature-control device (94);

a bio-feedback device measures the mammal's actual temperature (90), and transmits the measurement to the temperature-control device (94);

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depending on the measurement, the temperature control device (94) alters the temperature of the desired medium; and

an outlet source (246) directs the desired medium to manage the temperature of the mammal (90);

wherein the mammal (80) is to have its temperature set to a predetermined-desired temperature which is entered into the temperature-control device (94);

wherein when the actual temperature is above the predetermined-desired temperature, the temperature control device alters the temperature of the desired medium to a predetermined differential from the actual temperature; and wherein when the actual temperature is below the predetermined-desired temperature, the temperature control device alters the temperature of the desired medium to a pre-set differential from the actual temperature (see page 16, line 5-21).

Re claims 2, 3, 11,12, 20, 21,31, 32, 40, 55, 56, 65, 66, 69, and 87, Kushnir further discloses the desired medium is water or air (see page 6, line 10-12); the temperature control device being a heat transfer unit with a temperature-measurement instrument (see Abstract).

Re claims 51-53, 63, 73, Kushnir further discloses the temperature-control device (94) can alter the temperature of the desired medium (106, 107) at a predetermined rate; the temperature-control device (94) alters the temperature of the desired medium to a pre-set differential from the actual temperature.

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Re claims 74-76, Kushnir further discloses the predetermined-desired temperature is selected from the group consisting of a temperature below the mammal's normal temperature (80).

Re claims 22-29, 41-50, 70, 77-86, and 88, as shown in Figures 4-6, Kushnir further discloses the outlet source directing the desired medium (106, 107) into a blanket (220) and or mattress or mattress pad (see page 2, line 29-30); the blanket has a plurality of channels(not numbered; however, clearly seen in Figure 5, page 15, line 20-27); the blanket has a plurality of apertures (not numbered; however, clearly seen in Figure 5) directing the desired medium in the direction of the mammal (80).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. *Claims 4-9, 13-19, 33-39, 57-62, 67, 68, 71, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushnir (Publication Number WO 99/44552).*

Kushnir discloses the invention as recited above; however, fails to disclose a predetermined differential temperature ranges from 5 to 15 degrees Celsius below the actual temperature, a pre-set differential temperature ranges from 5 to 15 degrees Celsius above the actual temperature, a predetermined-maximum temperature is 0.1 to 10 degrees Celsius above a predetermined-healthy temperature of the mammal, and a pre-selected differential temperature is from 0.01 to 5 degrees Celsius above and below the predetermined-healthy temperature.

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the range of the predetermined differential temperature, the pre-set differential temperature, the predetermined-maximum temperature and the pre-selected differential temperature, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 US PQ 233 (see MPEP §2144.05).

#### ***Prior Art***

The IDS (PTO-1449) filed on January 8, 2002 has been considered. An initialized copy is attached hereto.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of four patents.



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Elkins et al. (Patent Number 4,691,762) disclose a personal temperature control system  
Quisenberry (Patent Number 5,097,829) discloses a temperature controlled cooling system.

Sarian et al. (Patent Number 5,183,039) disclose a temperature control device for fluid filled pad.

Borders (Patent Number 6,149,674) discloses a patient thermal regulation system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 703-308-6434. The examiner can normally be reached on Monday-Friday 7:30am- 5:00pm - First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E Denion can be reached on 703-308-2623. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-308-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

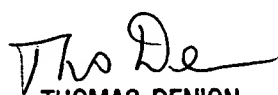
TT

May 20, 2002

Theresa Trieu

Patent Examiner

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THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700